



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0111]

Hours of Service of Drivers: Renewal of Illumination Fireworks, LLC and ACE Pyro, LLC Exemptions from the 14-Hour Rule during Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of applications for exemptions.

SUMMARY: FMCSA announces its decision to grant exemptions to Illumination

Fireworks, LLC and ACE Pyro, LLC (the applicants) from the requirement that drivers of commercial motor vehicles (CMVs) must not drive a CMV following the 14th hour after coming on duty. The FMCSA renews the exemptions for drivers of approximately 50 CMVs employed by the applicants in conjunction with staging fireworks shows celebrating Independence Day during the period June 28 - July 8, 2015, inclusive.

During this period, the CMV drivers employed by the applicants will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and will continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The Agency has determined that the terms and conditions of the limited 1-year exemptions will ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemptions.

DATES: These exemptions are effective during the period of June 28 (12:01 a.m.) through July 8, 2015 (11:59 p.m.).

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, E-mail: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including

any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The initial exemption application from Illumination Fireworks, LLC (USDOT 2326703) and ACE Pyro, LLC (USDOT 1352892) (the applicants) for relief from the HOS rule was submitted in 2014; a copy is in the docket. That document fully described the nature of operations encountered by CMV drivers employed by the applicants. On June 28, 2014, the Agency granted the applicants' exemptions from the HOS regulation that prohibits drivers from operating property-carrying CMVs after the 14th hour after coming on duty. The exemption expired on July 8, 2014.

On October 14, 2014, FMCSA published notice of the applicants' renewal request (79 FR 61687). The applicants are fireworks display companies that employ CMV drivers who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements to transport Division 1.3G and 1.4G explosives (fireworks) in conjunction with the setup of fireworks shows for Independence Day. The applicants

seek exemptions from the 14-hour rule in 49 CFR 395.3(a)(2) so that drivers would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. The applicants state they are seeking HOS exemptions for the 2015 Independence Day period because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulations means most shows would require two drivers, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty-period provided by the exemption, safety would decline because fireworks drivers would be unable to return to their home base after each show should they have fireworks remaining after the display. They would be forced to park the CMVs carrying Division 1.3G and 1.4G explosives in areas less secure than the motor carriers' home base.

Method to Ensure an Equivalent or Greater Level of Safety

As a condition for maintaining the exemptions, each motor carrier will be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any CMVs under this exemption. The applicants advise they have never been in an accident.

In the exemption request, the applicants asserted that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. The applicants noted that during the 2014 Independence Day season, the furthest Illumination Fireworks or ACE Pyro CMVs traveled from their home bases was 150 miles, which involves a very small amount of

driving. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours of duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

A copy of the application for the exemptions is available for review in the docket for this notice.

Public Comments

Two comments were received in response to the October 14 notice. The Advocates for Highway and Auto Safety (Advocates) and Ms. Lisa Kupsey opposed the application.

The Advocates said that “its arguments against the granting of the present exemption are almost identical to those provided in prior comments regarding similar applications for exemption filed by the APA. Because the present application relies almost entirely upon the APA exemption application process as a foundation for its application, Advocates sees no need to restate the arguments in their entirety.”

Ms. Kupsey commented

“Is this business that necessary that it has to allow its employees to be ‘exempt’? Probably not.”

All comments are available for review in the docket for this notice.

FMCSA Response to Public Comments and Agency Decision

Prior to publishing the Federal Register notice announcing the receipt of the applicants’ exemption request, FMCSA ensured that the motor carriers involved have a

current USDOT registration, Hazardous Materials Safety Permit, minimum required levels of insurance, and were not subject to any “imminent hazard” or other OOS orders. The Agency conducted a comprehensive investigation of the safety performance history of each applicant during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies, for each applicant motor carrier. The Agency also requested and received a records review of each carrier from the Pipeline and Hazardous Materials Safety Administration (PHMSA).

FMCSA reviewed the comments and concluded that the information provided by Ms. Kupsey did not address this notice.

With regards to Advocates’ suggestion that the applicants should have alternative means to comply with the HOS regulations without an exemption, FMCSA does not believe reasonable alternatives are necessarily available in many locations. Such alternatives would include locating additional drivers with CDLs and HM endorsements. This is difficult for part-time, holiday-specific work. CDL holders with HM endorsements are likely to be in high demand, given the Transportation Security Administration requirements for such drivers. And, as indicated in this notice and the application, potential alternatives could drive the cost of fireworks displays beyond the financial capabilities of many communities.

The FMCSA has evaluated the application, the safety records of the companies to which the exemption would apply, and the comments. The Agency believes that the applicants will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and grants the

requested exemptions covering the operations of the CMV drivers employed by the applicants.

Terms and Conditions of the Exemptions

Period of the Exemptions

These exemptions are effective during the period of June 28 (12:01 a.m.) through July 8, 2015 (11:59 p.m.).

Extent of the Exemptions

The drivers employed by the applicants are provided an exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by the exemptions may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemptions are contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty as extended by any off-duty or sleeper-berth time in accordance with this exemption. The exemptions are further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. The carriers and drivers must comply with all other applicable requirements of the FMCSRs (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Other Conditions

The exemptions are contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemptions must maintain a valid

CDL with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Drivers operating under an exemption must carry a copy of the exemption document onboard the vehicle for review by any law enforcement officer.

Preemption

During the period the exemptions are in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemptions with respect to a person or entity operating under the exemptions (49 U.S.C. 31315(d)).

FMCSA Accident Notification

Exempt motor carriers must notify FMCSA by email to MCPSPD@DOT.GOV within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

- a. Exemption Identifier: "ILLUM/ACE"
- b. Name and USDOT number of the motor carrier,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- e. Driver's name and driver's license number,
- f. Vehicle number and State license number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,

- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the two motor carriers and approximately 50 drivers covered by the exemptions will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemptions. The FMCSA will immediately revoke the exemptions for failure to comply with its terms and conditions.

Issued on: June 8, 2015.

T. F. Scott Darling, III,
Chief Counsel.